

# About the F46 application form

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## Application to vary a modern award

### Who can use this form

Use this form if you want to make an application for the Fair Work Commission (the Commission) to make:

- a modern award,
- a determination varying a modern award, or
- a determination revoking a modern award.

You should only use this form to make an application **outside** of the system of the 4 yearly reviews of modern awards (4 yearly reviews) or the annual wage reviews.

You must be a person, organisation or outworker entity covered by the modern award to be eligible to make an application, or be an organisation that is entitled to represent the industrial interests of the person(s) or organisation(s) that are covered by the modern award.

You may make applications for 2 or more related things at the same time, depending on the kind of application you want to make. See section 158 of the [Fair Work Act 2009](#) (the FW Act) for more information about who may apply to make a modern award or for a determination varying or revoking a modern award.

### About varying modern awards

The Commission must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions. In order to achieve the modern awards objective, the Commission must take into account the matters set out in section 134 of the FW Act, such as relative living standards and the needs of the low paid.

The FW Act allows the Commission to make a modern award, or make a determination varying or revoking a modern award **outside** of the system of 4 yearly reviews if the Commission is satisfied that to do so is necessary to achieve the modern awards objective (s.157(1)).

The Commission may also make a determination varying modern award minimum wages **outside** of the 4 yearly review and the system of annual wage reviews if the Commission is satisfied that to do so is:

- justified by work value reasons, and
- necessary to achieve the modern awards objective (s.157(2)).

Note: section 157 to 160 of the FW Act set out other situations where the Commission may vary a modern award.

See the Commission's [Awards and Agreements](#) webpage for more information about the 4 yearly review and the annual wage review.

### Lodgement and service of your completed form

**1. Lodge** this application and any supporting documents with the Commission.

You can lodge your application by post, by fax or by email or in person at the [Commission's office](#) in your State or Territory.

**2. Serve a copy of your application and any supporting documents** on each Respondent listed in the application as soon as practicable after lodging with the Commission. You can send this

application and supporting documents in a number of ways, including by email or by express or registered post.

## Where to get help

### Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

- processes in the Commission
- **how to make an** application to the Commission
- how to fill out forms
- where to find useful documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website [www.fwc.gov.au](http://www.fwc.gov.au) also contains a range of information that may assist.

### Throughout this form



This icon appears throughout the form. It indicates information to help you answer the question following.

### Legal or other representation

Representation is where another person (such as a lawyer or union official) speaks or acts on your behalf in relation to your matter. There is no requirement for you to be represented when you appear at the Commission. You will need the permission of the Commission member dealing with your case if you wish to be represented by a lawyer or paid agent unless that person is:

- a bargaining representative, or
- employed by a union or employer organisation, a peak union or peak employer body, or
- one of your employees or officers (if you are an employer).

If you decide to represent yourself in proceedings you will need to make sure you are well prepared.

### Glossary of common terms

**Applicant**—This is the person or organisation that is making an application.

**Party**—A party is a person or organisation involved in a matter or case that is brought to the Commission.

**Respondent**—The person or business responding to an application made by an Applicant.

**Service**—Serving a document means giving a copy of the document to a person or organisation, usually to the other party to the matter. You can serve a document in a number of ways, including by email, fax, express or registered post, or in person. Parts 7 and 8 of the Fair Work Commission Rules 2013 deal with service.

### Privacy

The Commission collects the information (including personal information) provided to it in this form for inclusion on the case file, and may disclose this information to the other parties to this matter and to other persons. For more details of the Commission's collection, use and disclosure of this information, please see the [Privacy Notice](#) for this form, or ask for a hard copy to be provided to you.



**Remove this cover sheet** and keep it for future reference—it contains useful information

## Form F46 Application to vary a modern award

Fair Work Act 2009, ss.157–160

This is an application to the Fair Work Commission to make a modern award or make a determination varying or revoking a modern award, in accordance with Part 2-3 of the [Fair Work Act 2009](#).

### The Applicant



These are the details of the person who is making the application.

|                    |  |            |            |
|--------------------|--|------------|------------|
| Title              | <input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify: |            |            |
| First name(s)      | Christian  |            |            |
| Surname            | Gavin  |            |            |
| Postal address     | [REDACTED]   |            |            |
| Suburb             | [REDACTED]   |            |            |
| State or territory | [REDACTED]   | Postcode   | [REDACTED] |
| Phone number       | [REDACTED]   | Fax number |            |
| Email address      | <a href="mailto:inggavkc@gmail.com.au">inggavkc@gmail.com.au</a>   |            |            |

If the Applicant is a company or organisation please also provide the following details

|                          |  |
|--------------------------|--|
| Legal name of business   |  |
| Trading name of business |  |
| ABN/ACN                  |  |
| Contact person           |  |

Does the Applicant need an interpreter?



If the Applicant requires an interpreter (other than a friend or family member) in order to participate in conciliation, a conference or hearing, the Fair Work Commission will provide an interpreter at no cost.

Yes—Specify language

No

Does the Applicant require any special assistance at the hearing or conference (e.g. a hearing loop)?

Yes— Please specify the assistance required

No

Does the Applicant have a representative?



A representative is a person or business who is representing the Applicant. This might be a lawyer, or a representative from a union or employer association. There is no requirement to have a representative.

Yes—Provide representative's details below

No

### Applicant's representative



These are the details of the person or business who is representing the Applicant.

|                    |  |            |  |
|--------------------|--|------------|--|
| Name of person     |  |            |  |
| Organisation       |  |            |  |
| Postal address     |  |            |  |
| Suburb             |  |            |  |
| State or territory |  | Postcode   |  |
| Phone number       |  | Fax number |  |
| Email address      |  |            |  |

### 1. Coverage

1.1 What is the name of the modern award to which the application relates?



Include the Award ID/ Code No. of the modern award

Security Industry Award

1.2 What industry is the employer in?

Security

## 2. Application

### 2.1 What are you seeking?

Specify which of the following you would like the Commission to make:

- a determination varying a modern award
- a modern award
- a determination revoking a modern award

### 2.2 What are the details of your application?

Can the Security Industry Award define what items make a uniform so that payment of the uniform or parts of the uniform are covered under the award?

Attach additional pages, if necessary.

### 2.3 What are the grounds being relied on?

Using numbered paragraphs, specify the grounds on which you are seeking the proposed variations.



You must outline how the proposed variation etc is necessary in order to achieve the modern awards objective as well as any additional requirements set out in the FW Act.

- 1) Recently I asked for my employer how much did they reimburse for shoes that they specify (black leather non-slip soles) in their uniform policy. The answer was they did not pay for shoes. When asked why non-slip soles the company's HR officer replied that it was for safe reason.
- 2) Fair Work unable to make a decision: I contacted Fair Work regarding this issue and the response was that there was no definition on what a uniform was under the Security Industry Award.
- 3) No reference in the Award: There is no reference in the Security Award that mentions what a uniform consists of, the Award does not mention shirts, trousers, dresses or pants, yet these are assumed to be the requirements of a uniform.
- 4) Define what makes a uniform: If an employer requires a specific type of footwear and they include this in their uniform policy or code of dress then this should constitute part of the uniform.

Attach additional pages, if necessary.

## Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

|                   |                 |
|-------------------|-----------------|
| Signature         | Christian Gavin |
| Name              | Christian Gavin |
| Date              | 8/11/2018       |
| Capacity/Position | Security Guard  |



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS